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CURRENT TOPICS

Family Courts?

DURING a week in which a further substantial increase in juvenile crime was reported, it was interesting and encouraging to learn of the proposals which have been submitted to the Ingleby Committee by a group of experts under the leadership of the wife of the Archbishop of Canterbury, Mrs. FISHER, and the Council for Children's Welfare. These recommendations, which have now been published in booklet form under the title " Families with Problems," cover a wide field. Those which immediately attract attention are the suggestion that the age for criminal responsibility should be raised from 8 to 15 or 16, the school-leaving age, and that offences committed by young people over this age but under 21 should be referred to family courts. The Fisher Group would prefer the establishment of youth courts to deal with offenders in this age group, but the Council for Children's Welfare go a step further and suggest that where children under the age of 15 or 16 commit anti-social acts the matter should be put in the hands of a family service (which has the blessing of both bodies and is intended to replace the existing social services which are considered to be most inadequate) and if their guidance is ignored the case would be brought before the family court. The Council for Children's Welfare intend that the family court should also have jurisdiction in matrimonial disputes and matters relating to paternity orders, neglect or cruelty to children, custody and adoption. Clearly this report strikes at the foundation of our present social services and some branches of our legal system, but it also attempts to solve many of the problems which beset family life and the lives of young people. Those responsible for these far-reaching proposals hope that they will be considered carefully by the Home Office, the social services and the legal profession. At this point we can only say that we have not made up our mind about any of these recommendations.

Miss Margery Fry

As a nation we are fortunate in having so many practical idealists whose influence upon our social life and the content of our law is impossible to estimate with certainty. One such was Miss MARGERY FRY, whose death last week at the age of 84 we regret to record. There is no doubt that Miss Fry herself and the Howard League for Penal Reform, of which she was so active a member, were largely responsible for the change in climate which made possible the passing of the Criminal Justice Act, 1948, and the acceptance of many administrative reforms. Miss Fry was for several years a member of the Home Office Advisory Council on the

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Treatment of Offenders. One of the sources of strength of our system of government is the extent to which outside experts are associated with it on advisory councils and other bodies of this kind. Although she was no politician, Miss Fry had a greater influence on her particular branch of politics than most politicians: no lawyer (although the daughter of a judge), she had more influence on our penal system than all but a handful of lawyers.

Penal Problems

TWICE as many prisoners as last year are sleeping three in a cell. The number of prisoners to-day is the highest for this century, and one-sixth above last year, the latest figure being 24,500. Borstal figures have risen from 2,600 to nearly 4,000 in one year. Both LORD PAKENHAM and LORD MANCROFT in the Lords Debate on the prisons, on 23rd April, referred to these alarming figures, and the latter enumerated the measures which the Government is now taking to deal with the situation. An experimental attendance centre for males aged from 17 to 21 is to be established this year at Manchester, the Bill to attach the wages of maintenance defaulters instead of sending them to prison has been given a second reading, the Commissioners are considering sites for new Borstal establishments, government buildings becoming available from time to time are being examined and one has been acquired occupation of which should begin next month, and planning permission is being sought for four more open establishments, two prisons and two Borstals. Among reforms and suggestions put forward in the course of the debate, the most interesting to lawyers was that proposed by LORD ASTOR to the effect that the young barrister should devote one night a month or more to some form of practical work, such as prison visiting and helping discharged prisoners and probation officers; that judges on their appointment should be given six months' sabbatical leave to enable them to study these matters, and that training courses should be arranged for recorders and magistrates. Lord Mancroft's view was that the proposed Institute of Criminology would meet this need. Whether that is so remains to be seen, as the Institute is not yet in existence, but much more practical and immediate steps towards the desired end appear to be necessary. It would be appropriate if such an Institute were founded as a memorial to Miss Margery Fry and other active reformers.

Retrospective Legislation

WE welcome the decision of the CHANCELLOR OF THE EXCHEQUER not to proceed with his project for legislating retrospectively against "dividend stripping." While it is true that many of his predecessors have put forward similar proposals and Parliament has approved them, in our opinion it is more important that the law should be certain than that some tax evaders should be drawn into the net. It may well be that there are circumstances in which retrospective legislation is justifiable: but this is not one of them.

Finance Companies and Credit Control

IT is with relief that those who have to advise finance companies about their obligations under the law and in particular under the Hire-Purchase and Credit Sale Agreements (Control) Order will have learned that the Court of Criminal Appeal has now resolved the conflict between the judges on the question whether criminal liability under the Order is absolute or whether it depends on proof of *mens rea*. In *R.* v. *St. Margaret's Trust, Ltd.* (*The Times*, 22nd April), it was decided that liability was absolute, because the Order was part of the "credit squeeze," the selling of motor cars on hire-purchase or credit terms, for example, being restricted by the provision that (at the material time) 50 per cent. of the cash price must be deposited. Disposal of the goods affected by the Order is prohibited unless this, among other requirements, is complied with. The finance company were unaware of the offence having been committed, the fraud being the result of a conspiracy between the dealers and their customers. Mr. Justice DONOVAN held, however, that where Parliament enacted that a certain thing should not be done, it was not necessarily an excuse to say: "I carry on my business in such a way that I may do this thing unwittingly and therefore I should suffer no penalty if I transgress." The answer in some cases was that the importance of not doing what was prohibited was such that the method of business had to be rearranged so as to give the necessary knowledge.

The Restrictive Practices Court

THE Restrictive Practices Court sat for the first time last week to hear applications to fix dates for the hearing of cases due to come before it. The hearing of the first case will begin on Monday, 6th October, and at present there are thirty-nine cases in course of preparation. At the outset all the members of the court will sit together in order to get a common approach to the new procedure, but later it is intended that the court shall sit in two divisions.

Control of Rabbits

IT is sometimes a little difficult for those who live in the cities and towns of this land to appreciate the fact that rabbits are pests, at least in the eyes of farmers and the law. The control of these animals by humane methods is looked upon by all as desirable, but in practice this has been impossible to achieve and even the Committee on Cruelty to Wild Animals (Cmd. 8266) reluctantly concluded that in some areas it was impossible to control them without setting traps in the open and, in view of this finding, the open use of spring traps is now, in certain circumstances, permissible by law. An Essex farmer recently adopted an illegal method of control in so far as he introduced rabbits infected with myxomatosis on to his land contrary to s. 12 of the Pests Act, 1954, which provides that "A person shall be guilty of an offence if he knowingly uses or permits the use of a rabbit infected with myxomatosis to spread the disease among uninfected rabbits." In this, the first prosecution of its kind, the farmer was convicted, but he maintained that he had only used this method of control because his neighbour, on whose land, he alleged, the rabbits bred, would not co-operate with him in reducing their numbers. Apart from the remote possibility of being able to maintain a successful civil action (see *Seligman* v. *Docker* [1949] 1 Ch. 53), it would appear that the proper course to follow where preventive measures are called for in circumstances such as arose in this case is to seek the assistance of the Minister of Agriculture under the appropriate provisions of the Agriculture Act, 1947, and the Pests Act, 1954.

Inner Temple Library

ON the 21st April, the new Inner Temple Library was opened by the Treasurer, Sir PATRICK SPENS, in the presence of the LORD CHANCELLOR and a distinguished company. The new building is Georgian in inspiration and sober in design. The old building was exuberantly pinnacled with all the flamboyances of Victorian gothic. It had a clock tower like a little brother of Big Ben on the corner nearest King's Bench Walk and one of the first bombs that fell on the Temple in 1940 split it from top to bottom. In his inaugural speech Sir Patrick Spens recalled the progressive steps of destruction as the bombardment of London was intensified, the gradual evacuation of books to the country and the final fiery dissolution of their home. After the war a new temporary library was established on the ground floor of the two upper buildings of King's Bench Walk. The new library houses almost 90,000 volumes. Their splendid oaken setting is a triumph of the craftsmanship of twenty-eight skilled joiners. Despite its deceptively simple exterior, parts of the inside of the library, designed to give individual readers as much privacy as possible, are something of a labyrinth. Indeed, the librarian of one of the other Inns of Court lost his way so completely that he had to leave by a different door and go back in again by the principal entrance before he could find his hat and coat.

Law Day—U.S.A.

PRESIDENT EISENHOWER proclaimed last Thursday, the 1st of May, as "Law Day—U.S.A." This official proclamation was described as a call for action in recognition of the law and what it has meant to the United States and it imposed a duty and responsibility on American lawyers to apprise the people of the great privilege it is to live under the rule of law. Mr. CHARLES S. RHYNE, the President of the American Bar Association, recently wrote that the selection of 1st May has great significance in that it is also the day on which international Communism celebrates its past victories and looks forward to its future conquests. "There could be no better date," Mr. Rhyne wrote, "for us to recall the basic moral and philosophical principles upon which our society is based, and to contrast them with the cynical, immoral and atheistic philosophy which underlies the international Communist conspiracy." Speakers were offered for 1st May to every high school, college, law school and civic or other association. Governors of the states and mayors of cities issued their own proclamations and these gave added emphasis and support to the day of rededication to the law.

Legal Fireworks

THE Hertfordshire Law Society celebrated its seventy-fifth birthday last week with a party at Knebworth House. The climax of the evening was a firework display, which is unconventional for lawyers' gatherings. One outstanding merit was that there were no speeches. There are few speakers habitually attending functions of this kind who can claim to have a high entertainment value and we confidently recommend other societies which may be contemplating a party, with or without the excuse of a seventy-fifth birthday, to consider fireworks in lieu of speakers. The only apparent disadvantage of fireworks is that they are much more expensive. We congratulate the Hertfordshire Law Society on covering three-quarters of the way to its centenary.

Relief for Employed Solicitors

WE have barely had time to glance at the Finance Bill as yet, but we could not forbear to look at cl. 14 and Sched. V before closing for press. They provide that, *inter alia*, the fee and contribution to a Compensation Fund or Guarantee Fund payable on issue of a solicitor's practising certificate may be deducted from the emoluments of an office or employment for tax purposes, as may also an annual subscription paid to a body of persons approved for the purpose by the Commissioners of Inland Revenue. There seems every reason to expect that The Law Society will be so approved and a long-standing grievance laid to rest.

THE CLOSED-CIRCUIT COMPANY

IN *Re Castiglione's Will Trusts* [1958] 2 W.L.R. 400; *ante*, p. 176, Danckwerts, J., held that a testator could validly give shares in a company to that company, and directed that the shares in question should be vested in a nominee for the company.

The implications of this decision are staggering. If shares can be given to the company itself by will, they can also be given *inter vivos*. If two people own all the shares in a private company thay can transfer the majority of those shares to a third person to hold as a bare trustee for the company itself. There would appear to be no practical disadvantage in doing this, because the original shareholders could still act as directors of the company, conduct its business, and remunerate themselves out of the profits. But they would have achieved something beyond the wildest dreams of Mr. Salomon—a company which was not only a separate entity, but controlled by no one.

For profits tax purposes it would be difficult for the Revenue to contend that the company was director-controlled, when the majority of the shares were held by a trustee for the company.

From the point of view of a sur-tax direction, the position would be even more interesting. Assuming in favour of the Revenue that the company was one to which s. 245 of the Income Tax Act, 1952, could apply, as being under the control of not more than five persons, the consequences of a direction would be to apportion more than half the income to the company.

Section 254 deals with cases where a member of a company is itself a company. Assuming again in favour of the Revenue that this section (which refers to "the first company" and "the second company") could apply at all to a company which was a member, within the extended meaning given to that word by s. 255 (2), of itself, the income apportioned to the company would be sub-apportioned to its members, including itself as beneficial owner of the majority of the shares. In order to render the two original shareholders liable to sur-tax in respect of the whole income of the company it would be necessary for the Revenue to make an infinite number of sub-apportionments, and one feels that even the Revenue would tire before the day was won.

J. P. L.

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AS OTHERS SEE US?

THE Tenth Legal Convention of the Law Council of Australia was held in Melbourne during the 1957 July law vacation and one of the distinguished guests present at the invitation of the Law Council was Willard H. Pedrick, Professor of Law at the Northwestern University, Illinois.

In preparing one of the main papers laid before the Convention for discussion Professor Pedrick recognised that it could not be regarded as prudent for an academic lawyer from overseas to address himself to affairs relating to the practice of lawyers of another land, and he thought that to follow such a course was " in all probability an invitation to disaster." Nevertheless, Professor Pedrick resolutely followed this course when delivering a paper entitled " Tax Practice and the Legal Profession " and was so bold as to compare unfavourably the approach to this field of practice by the legal profession in the land of his hosts (which he referred to as the Land of Oz) with that of lawyers in his own country. In spite of this the paper was well received, and as we think that his remarks are not entirely irrelevant in relation to the position in the United Kingdom we are publishing the following summary of Professor Pedrick's address, which was published in full in the *Australian Law Journal*, vol. 31, no. 4, at p. 267.

TAX PRACTICE AND THE LEGAL PROFESSION

THE Land of Oz has one-sixteenth of the population of the United States, but in area, business organisation, institutions and general way of life it has much in common and it may be interesting to compare the rôle of the legal profession in both countries.

The profession in the United States

Since 1900, the population of the United States has more than doubled, but the rate of increase in output and real wages has more than kept pace, and this marked trend of improved productivity and material prosperity is likely to continue.

These developments have led to an enormous increase in demand for the services of lawyers, particularly in the business world and in relation to taxation, although other work has declined, especially property law and litigation. There are more lawyers in comparison with the population, and although the economy is able to support them those who are in practice have not, until very recently, shared in the general increase in real income. However, the profession is fully employed and the area of legal service continues to expand.

The mere fact of this expansion is not in itself sufficient to provide more work, as members of other professions are always eager to enter a new field. The legal profession will only gain new work if it proves itself competent to do it.

Tax practice in the United States

One such new field is tax practice. Until the thirties, lawyers and law schools took little interest in tax law, but when the number of taxpayers and the amount of taxes they paid both increased tax law and its wider implications assumed a new importance and led inevitably to tax planning.

A substantial number of practitioners trained for this work by private study or by serving with the Revenue Service, and when it became clear that tax law could not be separated from general practice courses in this subject were introduced in law schools.

The task of creating a legal profession familiar with tax law could not be left solely to law schools, as it would take too long for students to become competent advisers, and the knowledge they acquired at law school would soon become outdated. The need was met by universities and State law associations who sponsored tax institutes or tax schools for practising lawyers, and these concentrated courses of a few days' duration have always been well attended. These schools are helping to achieve the desired result of gaining public confidence in the legal profession in tax matters, and many lawyers have growing tax practices, although city lawyers often leave the preparation of income tax returns to accountants.

In addition to the regular professional journals in the tax field and innumerable other publications, the American Bar Association and the Practising Law Institute endeavour to keep members of the profession informed of developments in tax law by means of special tax reports and what is really a correspondence course.

Attempts have been made to define the boundaries of professional activity, and in some cases a satisfactory agreement has been reached, but not in the tax field. The courts have found some accountants guilty of illegal practice of law, but because of his training and basic skills the lawyer familiar with tax law should have a great advantage as an adviser on tax matters over the accountant to whom the preparation of tax returns is normally conceded. With this possible exception, lawyers have succeeded, through individual effort, institutes or schools, and the printed word, in adding the tax field to their sphere of practice.

The profession in the land of Oz

The population of Oz has also grown phenomenally, and in spite of inflation real wages have increased by more than 20 per cent. over a fifteen-year period. As in the United States, where the tax system is similar, this has offered new opportunities for lawyers, whose numerical ratio to the population has remained fairly constant, but as to their income there is little evidence. In considering whether the profession in this country has effectively expanded its work by occupying fresh fields it will be asked whether it has succeeded in entering the field of tax practice.

Tax practice in the land of Oz

Although some lawyers are expert in this field, it would seem that tax business has escaped the profession as a whole and been undertaken by others with no training in law. This view may be supported by the fact that the Taxation Department does not recruit staff on the basis of legal training, and objections to assessments are largely prepared by accountants, who frequently represent the taxpayer before Boards of Review, upon which, however, the legal profession is well represented. Tax law has occupied little space in legal journals but the opposite is true of publications for accountants. Only one State professional legal organisation has a standing committee on taxation and neither they nor law schools have arranged courses of instruction for those already within the profession. Law students have received little tuition in tax law.

At a time when law is expanding, lawyers have followed the dangerous course of imagining that the profession can limit its service to probate, conveyancing and litigation, but, apart from

tax avoidance, tax law concerns every aspect of practice. If the lawyer continues to ignore his rightful place as an adviser on tax law the public interest may suffer if the rôle is adopted by accountants.

It would be difficult for the legal profession to re-enter the tax field and it is a pity that not only in this field but in society as a whole Ozians are placing more reliance upon law but less on the lawyer.

Some observations by way of conclusion

In both the United States and Australia lawyers must learn tax law not only to command new work but to adequately perform that which is theirs by tradition. Mere knowledge of tax law will ripen to affection and devotion, and a lawyer's concern should not only be tax minimisation but law reform.

A professional qualification in law or accounting does not necessarily mean that the holder is an expert in tax law, and it may be desirable to provide some recognition for those who are specially and actually qualified in this field.

Public relations raise another problem, and it is possible that in the field of taxation the public could be shown that the services of a lawyer may be enjoyed at a reasonable fee.

When the lawyer has become a competent tax adviser, relations with the accounting profession can be better resolved by negotiation, and it may be possible to agree areas of responsibility. There is no inevitable and irreconcilable conflict and a suggestion that members of one profession should maintain departments dealing with the work of the other would find little support.

The main issue is whether the increased demand for legal service is to be met by lawyers or those outside the profession. Universities in Australia are now offering courses in tax law but it is important for practising lawyers to acquire competence in new fields of service, and it would be surprising if Australia did not have the men to carry the whole profession forward to enlarged responsibilities.

This address by Professor Pedrick was an opportunity for Australian lawyers to see themselves as others see them : they may well have felt rather disturbed at what they saw. Perhaps readers in this country, too, will feel uneasy when they hear it suggested that tax practice has been captured by the accountancy profession because tax was ignored by universities and law schools (in this country it is possible to be called to the Bar and obtain a degree in law without taking an examination in tax law, and in the solicitors' final tax shares one paper with death duties and stamp duties), by the legal Press (can it be said that legal journals as a whole deal adequately with tax matters ?) and by the individual practitioner (apart from some larger firms which have taxation departments, how many solicitors would welcome tax work ?).

May it be said that this paper has enabled those of us who form the legal profession in this country to see ourselves as others see *us ?* We should be pleased to hear and to publish the views of our readers as to whether there is a case to answer in the charge which Professor Pedrick has levelled against our brethren in Australia but which seems to have a certain relevance to the position of the legal profession here.

CHARGING ORDERS ON LAND

In the past, solicitors have been deterred by the expensive and dilatory procedure under the ancient writ of elegit from levying execution on land. Moreover, by doing so they usually forfeited the right to issue a subsequent writ of *fi. fa.* With the abolition of the writ of elegit and the substitution of a simple procedure for obtaining a charging order on land (similar to that already in existence in relation to stocks) introduced by s. 35 of the Administration of Justice Act, 1956, most of the old objections to proceeding against the land of a judgment debtor have been removed. Section 35 came into operation on 1st January, 1957, and its effects were discussed at 101 Sol. J. 239, but old prejudices evidently die hard and in the High Court comparatively little use appears to have been made of the new procedure. No apology is needed, therefore, for returning to the subject in an attempt to make its advantages better known, though some repetition is unavoidable.

Section 35 (1) of the Act provides that the High Court (or any county court, but this article is only concerned with the High Court) may "impose on any such land or interest in land of the debtor as may be specified in the order a charge for securing the payment of any moneys due or to become due under the judgment or order." Subsection (2) makes provision for the order to be made "absolutely or subject to conditions as to notifying the debtor or as to the time when the charge is to become enforceable or as to other matters." In this respect the Act differs both from s. 195 of the Law of Property Act, 1925 (which with the exception of subs. (4) has now been repealed) and from s. 14 of the Judgments Act, 1838. Section 195 prohibited the judgment creditor from obtaining the benefit of a charge on land until one year after the date of entering judgment, while s. 14 provides that no proceedings may be taken to have the benefit of a charging order on stocks until the expiration of six months from the date of the order. In addition to judgments of the High Court (and county courts), subs. (4) of s. 35 makes the provisions of the section applicable to any order or award of any court or arbitrator which is enforceable as if it were a judgment or order of the High Court (or county court).

Procedure

The procedure for obtaining a charging order on land is contained in Ord. 46, r. 2, of the Rules of the Supreme Court. Where proceedings in any division of the High Court are already pending application is made *ex parte* in the same division (r. 2 (3)). In any other case the application is made *ex parte* by originating summons in the Chancery Division. The affidavit in support of the application must (*a*) identify the judgment or order to be enforced and state the name of the judgment debtor on whose land or interest it is sought to impose the charge and the amount remaining unpaid under the judgment or order at the time of the application, (*b*) specify the land or interest in question, (*c*) state that to the best of the deponent's information and belief the land or interest in question is the judgment debtor's and give the sources of such information and grounds for his belief (r. 2 (4)).

Rule 2 (2) of Ord. 46 provides that the order in the first instance shall be an order to show cause, specifying the time and place for further consideration of the matter, and imposing a charge in the meantime in any event. So far, no addition has been made to Appendix K of the Rules of the Supreme

Court to provide forms of orders in relation to land. In the meantime forms numbered 27 and 28 relating to charging orders on stocks can easily be adapted for use in the Queen's Bench Division. It is understood that a forthcoming supplement to the Encyclopædia of Court Forms will contain a precedent for a Chancery order *nisi* which may also be helpful. In the Chancery Division the order is, of course, drawn up by the registrar.

Registration of the order

The Land Charges Act, 1925, and the Land Registration Act, 1925, are made applicable to charging orders on land by s. 35 (3) and the order *nisi* should immediately be registered at the Land Charges Registry as an order affecting land or in the case of registered land by lodging a caution. If the creditor is in any doubt as to the nature of the debtor's interest in registered land he would be well advised at this point to inspect the register as he is entitled to do by s. 59 (3) of the Land Registration Act, 1925. In the case of unregistered land, it must be remembered that s. 6 (3) of the Land Charges Act, 1925, will apply to a charging order and the registration of the order will cease to have effect after five years unless it is renewed.

A copy of the charging order *nisi* must now be served on the judgment debtor (Ord. 46, r. 2 (5)). In this respect the rules differ from s. 15 of the Judgments Act, 1838, governing charging orders on stock, which only requires "proof of service of notice thereof to the judgment debtor, his attorney or agent." The time within which service must be effected ought to be stated in the order and in the Chancery Division, at any rate, it is the practice to do so. On the further consideration of the matter, the master must make the order absolute "unless it appears (whether on the representation of the judgment debtor or otherwise) that there is sufficient cause to the contrary" (Ord. 46, r. 2 (5)). Before the order *nisi* can be made absolute, however, service of the order must be proved unless this requirement is dispensed with at the hearing.

Land in joint ownership

The difficulty which the judgment creditor is most likely to encounter in practice is the case of land owned by the debtor jointly with another. Strictly speaking, the debtor's beneficial interest in such a case is in the proceeds of sale. However, the reader will have observed that s. 35 (1) of the Administration of Justice Act, 1956, covers not only "land" but an "interest in land." In *Cooper* v. *Critchley* [1955] Ch. 431, an action concerning s. 40 of the Law of Property Act, 1925, Jenkins, L.J., said: "I would be disposed to hold that a share in the proceeds to arise from a sale of land is an interest in land within the meaning of s. 40." The judgment of the learned lord justice in this case contains a review of previous decisions in which the use of similar expressions in statutes has been held to cover equitable interests in land. Regard being had to these authorities, it is submitted that a judgment creditor will not be precluded from obtaining a charging order merely by reason of the fact that the debtor only has an equitable interest in the land in question. (Whether every beneficial interest in property held on trust which happens to include land is an "interest in land" is another matter.) Where land is owned jointly the order can only charge the debtor's interest therein and cannot impose a charge on the land generally which would prejudice the interest of any other joint tenant. Although the judgment creditor may be in some difficulty when it comes to enforcing a charge on the debtor's interest in land which he holds jointly with another, a charging order is not without its uses. Registration at the Land Charges Register or a caution lodged at the Land Registry should at least make it difficult for the debtor and his co-owner to sell the property without the consent and concurrence of the judgment creditor.

Enforcing the charge

Unless the order absolute prohibits the judgment creditor from enforcing his charge before a certain time has elapsed, he is entitled to take immediate steps to realise his security. By s. 35 (3) of the Administration of Justice Act, 1956, a charge imposed under the section "shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand." The charge can therefore only be enforced by a judicial sale or by the appointment of a receiver. As the appointment of a receiver by way of equitable execution is available without first obtaining a charging order, this remedy is not likely to be resorted to very often. To obtain an order for sale, application should be made in the Chancery Division by originating summons under Ord. 55, r. 5A, of the Rules of the Supreme Court. Although it is not necessary to join other incumbrancers as parties to the application in addition to the debtor, time and expense may be saved by doing so. If the judge is satisfied that all persons interested in the property are before the court or are bound by the order, he may authorise a sale altogether out of court.

M. B.

Mr. GLYNN H. R. BARTON, solicitor, of Wimpole Street, London, W.1, has been appointed to the Board of the Alliance Building Society.

Mr. WILLIAM GORDON CAMPBELL has been appointed a member of the Restrictive Practices Court.

On the retirement of Sir Henry Dashwood, Mr. D. M. M. CAREY, legal secretary to the Bishops of Ely, Gloucester and Portsmouth, and actuary to the Lower House of Canterbury Convocation, has been appointed legal secretary to the Archbishop of Canterbury and principal Registrar of the Province of Canterbury with effect from 10th August.

Mr. M. C. N. DE LESTANG, Federal Justice, Nigeria, has been appointed Chief Justice of the High Court of Lagos.

Mr. C. E. HILL, prosecuting solicitor to Cardiff Corporation, has taken up a similar appointment with Derbyshire County Council.

Out of 317 candidates who entered for The Law Society's Final Examination held on 10th–13th March, 161 passed. The Council have awarded the following prizes: To Brian Stanley Norton, the Sheffield Prize, value £39; to Peter Robert Bromage, the John Mackrell Prize, value £15.

The President of The Law Society, Mr. Ian D. Yeaman, gave a luncheon party on 21st April at 60 Carey Street, Lincoln's Inn. The guests were: The Swiss Ambassador, Viscount Monckton, Q.C., Mr. M. F. J. Batting, Dr. Francis E. Camps, Mr. D. W. Dobson, Mr. James Relph, Mr. C. H. S. Blatch, Mr. G. D. G. Perkins and Sir Thomas Lund.

The Offices of the Supreme Court will close on Thursday, 12th June, being the day appointed to be kept as the Queen's Birthday.

Common Law Commentary

MASTER'S LIABILITY FOR SERVANT'S GOODS

THERE are plenty of decisions on a master's liability in respect of personal injury suffered by a servant but few in regard to goods of the servant lost or damaged in the course of employment. We may conveniently sub-divide the matter under headings as below.

Theft

The general rule is that a master is not under a duty to prevent the theft of a servant's goods: an attempt to make him liable was unsuccessfully made in *Deyong* v. *Shenburn* [1946] K.B. 227, where the plaintiff was employed as an artiste to play Widow Twankey and to provide his own costume. He left the costume in the theatre after a dress rehearsal and it was apparently stolen owing to a defective lock on the dressing-room door. One wonders what value it had to the thief. The plaintiff put his claim on the basis of an "unsafe system of work," thereby inviting the court to enlarge that concept from personal injury to property, but the Court of Appeal refused to do so. The same rule has been applied in the case of a claim against an occupier on the ground that loss of goods means that the premises are "dangerous." The Court of Appeal in *Tinsley* v. *Dudley* [1951] 2 K.B. 18 (following *Ashby* v. *Tolhurst* [1937] 2 K.B. 242) rejected the argument that where an invitation is extended to an invitee it extends to his goods so as to imply a duty to protect the goods against theft as well as against danger arising from the state of the premises. It is considered that the Occupiers' Liability Act, 1957, which by s. 1 (3) (*b*) extends the common duty of care to goods, does not alter this position.

By contrast, there is a duty to take reasonable care of a lodger's goods imposed on a landlady of a boarding house, but where a servant "lives in" there is no corresponding duty on the part of the master to take the care which a boarding-house keeper would be required to take (*Edwards* v. *West Herts Group Hospital Management Committee* [1957] 1 W.L.R. 415).

There is, however, one exception, and possibly two. In the case of a factory within the Factories Acts, 1937–48, it is enacted by s. 43 (1) that adequate and suitable accommodation for clothing not worn during working hours must be provided. In *McCarthy* v. *Daily Mirror Newspapers, Ltd.* [1949] 1 All E.R. 801, it was held that in considering whether accommodation is suitable the employer must take into account the possibility of theft. The second exception which may possibly be operative was mentioned in *Deyong* v. *Shenburn*, *supra*, namely, that there may be a duty on a master to take care to prevent theft of tools of a workman left on the employer's premises.

The master will, however, be indirectly liable for theft or other wrongful deprivation amounting to conversion where the act is an act by another servant committed in the course of his employment even though the act be done for the wrongdoer's personal benefit only and not for the benefit of the master (*Lloyd* v. *Grace, Smith & Co.* [1912] A.C. 716).

Damage

Another passage in *Deyong* v. *Shenburn* propounds the view, *obiter*, that there may be a duty on a master to prevent damage to clothing as much as to the person of a servant. "If through such a breach his clothes are torn off his back and he suffers no personal injury he may be entitled to recover damages . . .," said du Parcq, L.J.

There is an interesting passage by the learned lord justice on the limitations of *Donoghue* v. *Stevenson* (which had been cited in argument). His lordship said: "It is not true to say that wherever a man finds himself in such a position that unless he does a certain thing another person may suffer, or that if he does something another person will suffer, then it is his duty in the one case to be careful to do the act and in the other case to be careful not to do the act. Any such proposition is much too wide. There has to be a breach of duty which the law recognises, and to ascertain what the law recognises regard must be had to the decisions of the courts." At the same time it is submitted that the latter part of this passage is not a ground for pleading novelty as a defence.

Bailment

Whether a bailment arises between master and servant in regard to the servant's property brought on to the employer's premises must depend on the facts of the case, and it will often be difficult to be sure about this. A bailment requires an acceptance by the bailee, so that goods brought on to the premises without the knowledge of the master would not be within the concept of bailment, but the question arises whether knowledge will sometimes be implied. Suppose a master provides a cycle rack for cycles: it may well be that there is a bailment of such cycles as are placed in the rack by anyone properly using the premises.

The duty of a bailee whether gratuitous or not is generally regarded as a duty to take such care as in the circumstances may reasonably be expected (*Newman* v. *Bourne & Hollingsworth* (1915), 31 T.L.R. 209). He is not liable for accidents not caused by his negligence or the negligence of persons for whom he is responsible, but he is liable if he deviates from the terms of the bailment.

As occupier

The duty of a master as an occupier of premises towards his servant in regard to dangers in the premises is apparently the common duty of care by virtue of the Occupiers' Liability Act, 1957, both in regard to goods and personal injury. This follows from the following considerations:

1. Section 5 (1) says that where persons enter premises or bring goods to them in the exercise of a right conferred by contract, the duty owed them in respect of damage due to the state of the premises, in so far as the duty depends on a term to be implied in the contract by reason of its conferring that right, shall be the common duty of care. This appears applicable to servants, but it does not apply to contracts made before the commencement of the Act.

2. Section 1 (3) (*b*) lays down that the rules enacted in relation to an occupier of premises and his visitors shall "apply . . . in respect of damage to property . . ."

This duty may be hived off on to the landlord where the master is a tenant and a danger arises by the landlord's failure to repair in accordance with a covenant to do so (s. 4).

Notices limiting or excluding liability

It is an interesting question whether a master can limit his liability to his servant by a warning notice (whether in respect of danger to person or property). It is a fundamental rule of the law of contract that a notice may form part of a contract provided that it came to the knowledge of the other party (or ought to have come to his knowledge as a reasonable man) before the contract was concluded. But it is submitted that that rule has no application to the present problem: a warning notice for this purpose is a means of complying with the duty of care and not a term of any contract. But where there has been a breach the action could presumably be founded in tort rather than in contract and the question would then arise whether a warning notice was part of a contract to bar actions in tort.

The solution would seem to be this: that there are two kinds of notice. There is the notice which says "We will not be responsible for this, that or the other," which is meant to be a term or condition on which the premises are to be used, and the notice which says "Warning: this floor is dangerous, go the other way" which may be a sufficient compliance with the duty of care.

L. W. M.

PROFITS FROM THE SALE OF HOUSES

THE post-war period has seen many a handsome profit on the sale of houses built or purchased before the 1939–45 war, while the inclusion of such profits in the taxable income of the vendor has led to a great number of decisions in the courts which are not always easy to reconcile. This is partly because the categories of vendors themselves are many and varied, such as private investors in property; builders with property investments; builders with houses built to let and "builders' remainders"; companies with investment objects, companies with trading objects, companies with both kinds of objects, and so on.

Also, it is not always appreciated to what extent resolutions and minutes of the board of a company affecting the treatment of its properties in its accounts, or otherwise for the purposes of the company, may be relevant to a finding of fact by the appeal commissioners as to whether such properties are fixed assets or trading assets. And the same observation applies to correspondence with the inspector of taxes, and interviews with the inspector, regarding such profits. All goes on the inspector's file, and all goes to build up a picture—maybe, one which is only completed over a number of years. Hence the importance, at the earliest possible date, of close attention to all matters which may later provide the evidential material for a determination of fact by the commissioners, should a case go that far.

It is the purpose of this article to examine some of the decisions above referred to, and the law generally; and to note certain underlying principles which govern the situation, so as to offer some measure of guidance, both legal and practical, for those interested in transactions in property.

When profits assessable to tax

Whether the consideration for the sale of a house is taxable to the extent of any profit which accrues from the sale depends, firstly, upon whether the sale is effected by the owner in the course of his business, or as a result of an adventure or concern in the nature of trade; and, secondly, if the proceeds of sale are received in the course of trade, whether they are capital or income in the hands of the recipient. Whereas profits from the sale of fixed assets are receipts on capital account, profits from the sale of circulating capital are receipts on revenue account.

Whether or not a trade is being carried on is a mixed question of law and fact. In the event of a dispute, it is for the general or special commissioners to determine whether or not the profits arose in the exercise of a trade, by considering a number of business facts proved or admitted before them. On the other hand, whether there is evidence to justify the commissioners' finding of fact is a question of law, and one on which the aggrieved party can, under s. 64 of the Income Tax Act, 1952, appeal to the High Court by way of case stated. Also, since the case of *Edwards* v. *Bairstow and Harrison* [1956] A.C. 14; 99 SOL. J. 558, an inference drawn from primary facts that a particular transaction has or has not the characteristics of an adventure in the nature of trade may be challenged, as a matter of law, on the ground that the commissioners have misdirected themselves as to what those characteristics are. In this way, the door to an appeal from a determination of fact has been opened a little wider.

Profits from houses not assessable under Case VI of Schedule D

Fortunately, the problem, though complex enough, is somewhat simplified by the fact that, if profits from the sale of houses are assessable at all, they are only assessable under Case I of Sched. D, and cannot be assessed under Case VI. This was established in *Pearn* v. *Miller* (1927), 11 Tax Cas. 610, where Rowlatt, J., said: "If it is desired to tax the difference between what a man has bought property for, and sold it, you can only tax it, in my judgment, if you can say that what he did was a trade, or adventure or concern in the nature of trade. I think you cannot get under Case VI a tax out of appreciation of property; you have to get it under Case I." And in *Jones* v. *Leeming* [1930] 1 K.B. 279, Lawrence L.J., said: "It seems to me that in the case of an isolated transaction or purchase and re-sale of property there is really no middle course open. It is either an adventure in the nature of trade, or else it is simply a case of sale and re-sale of property." This *dictum* was later cited with approval when the case of *Jones* v. *Leeming* was before the House of Lords ([1930] A.C. 415).

Income or capital surplus

The distinction between income and capital surplus depends, for the purpose of the Income Tax Acts, on the facts of each particular case, and no hard and fast rule can be laid down. Whilst a single transaction may result in a taxable profit, other transactions may be so carried out as to be in the nature of temporary investments repeated several times over, resulting in capital accretions rather than annual profits or gains. But though an element of recurrence is not essential, repeated transactions may furnish an important element in deciding whether or not a trade is being carried on; and so may the use or existence of an organisation for the disposal of property, and the splitting up of an area of land purchased as a single unit into smaller units. Often, however, it is where the purchase and re-sale constitute an isolated transaction that it is most difficult to determine whether the transaction is in the nature of trade.

If a person is carrying on a trade of dealing in land and also holds properties as investments, it is necessary to distinguish between the properties held as investments and those which form part of the stock-in-trade of the business (*Hudson* v. *Wrightson* (1934), 26 Tax Cas. 55). But this distinction may be difficult to maintain, especially where the owner is a speculative builder, as in *Sharpless* v. *Rees* (1940), 23 Tax Cas. 361, where it was unsuccessfully contended that land bought and sold by the builder had been purchased for his personal use.

In *Harvey* v. *Caulcott* (1952), 33 Tax Cas. 159, however, a contrary decision was given. In that case a builder erected a number of shops. He sub-let two to his wife as his nominee, and these were transferred from his business to his private account. Later the shops were sold at a profit. He also bought a house for his foreman to live in, and this, too, was eventually sold at a profit. On appeal before the general commissioners, the builder contended that the sales in question were all realisations of investments, not being business assets, but if the house bought for the foreman was a business asset, it was part of the fixed, rather than the circulating, capital of the business. The court held that the profits arose on the realisation of investments.

Objects of a company

This case, on the other hand, was distinguished in *Granville Building Co., Ltd.* v. *Oxby* (1954), 35 Tax Cas. 245, where the company built two houses on an estate the rest of which it had developed and sold. On completion the houses, which were let and not offered for sale, were treated as stock-in-trade in the company's accounts up to 31st March, 1942. In the following May, however, the directors resolved that houses on hand at the earlier date should be treated as investments at the values shown in the last balance sheet, and they subsequently appeared as capital assets. In 1950 one of the houses was sold to the sitting tenant, and it was held that the company was rightly assessed to tax on the resulting profits. Harman, J., said there was no true parallel between a trading company and a private individual, and he underlined, in the case of a company, the importance of its memorandum of association. The appellant company had taken no power to *invest* in property except out of surplus capital, and at the date when the house in question was erected the company was indebted to its bankers.

In the recent case of *James Hobson and Sons, Ltd.* v. *Newall* (1957), 50 R. & I.T. 697, the memorandum of association was also a determining factor. The company's objects empowered it to carry on the business of builders, and to purchase, lease or otherwise acquire real or leasehold property for business purposes or for investment and re-sale. It was thus not empowered to *build* houses for investment. In 1929 the company built houses to let and it also retained for letting purposes builders' remainders. In 1927 it had bought land for the erection of a garage for the company's purposes, on which land were two houses. No differentiation between these two houses, those built specifically for letting and the builders' remainders was made in the books of the company. After the 1939–45 war the company sold those houses of which it obtained vacant possession. It was agreed that the builders' remainders were stock-in-trade of the company, and the profits from their sale assessable to tax. The court held that the houses built to let also formed part of the company's stock-in-trade, and that the profits from the sale of the two houses bought in 1927 were also assessable as the houses had been bought for business purposes.

Memorandum evidence of intention

Although a statutory company is governed by its memorandum of association, the objects clause contained in the memorandum is evidence of what the company *intends* to do, rather than evidence of what it actually does. Anything fairly incidental to the company's objects, as defined, is not (unless expressly prohibited) to be held to be *ultra vires*; and as the Lord President said in *Scottish Investment Trust Co., Ltd.* v. *Forbes* (1893), 3 Tax Cas. 231, "to sell, exchange, or otherwise dispose of, deal with, or turn to account, any of the assets of the company might be incidentally necessary in the conduct of the business of any company." A company formed solely to invest in property may, therefore, by the conduct of its affairs, be held to be trading in property.

The point is illustrated in *Rellim, Ltd.* v. *Vise* (1951), 32 Tax Cas. 254, where the company had power to hold land as investments, and further, to deal in land by purchasing and selling with a view to making a profit. In 1939 the company purchased a number of houses and garages and 13 acres of land; and in 1944 purchased a farm, all of which were let to tenants. Between 1945 and 1947 the company sold two of its houses, the 13 acres of land and the farm. Before the year 1946–47 it was treated for income tax purposes as an investment company and was allowed relief in respect of management expenses. On appeal to the general commissioners against assessments for the year 1948–49, the commissioners held that the company was a trading company, and the court upheld that decision.

The position, however, may be different where a company is formed to "nurse" assets with a view to their realisation. In *Glasgow Heritable Trust, Ltd.* v. *Inland Revenue Commissioners* (1954), 35 Tax Cas. 196, the company was incorporated to acquire tenement properties previously owned by a partnership of builders. The shares of the company were mainly held by the former partners and members of their families. Sales of flats took place from time to time either to sitting tenants or when the flats became vacant. There was held to be no evidence on which the commissioners were entitled to find that the sales were effected by the company in the course of a trade carried on by it.

Conclusions

What conclusions may therefore be drawn from the decided cases, and what considerations are relevant in a determination of fact by the appeal commissioners? Broadly, it would seem that a private investor is less liable to tax on realised profits than a builder; a builder less liable than a company; an investment company less likely to be liable than a trading company. If a company is to escape liability it is very desirable that its objects should empower it to invest; but even if they do, the company may nevertheless be held to carry on a trade. On the other hand, it is not impossible for a company with trading objects to carry on an investment business, though the onus of proof that it is not trading is made more difficult and, in some cases, impossible to discharge.

As *J. and C. Oliver* v. *Farnsworth* (1956), 37 Tax Cas. 51, shows, the fact that a house has been owned and let for a quarter of a century does not necessarily give it an investment character, but a monetary return compatible with the investment character of a property is a relevant consideration, and so is the ratio of properties sold to the number held. Again, it may be helpful to show that a proportion of sales was necessary (no other resources being available) to pay for

repairs or to meet street-making expenses. Unsolicited sales, too, are better than advertised sales, and reluctant sales better than willing sales. If the purpose of sales is to make the remaining land or houses a better economic unit, the course taken must be justified by the result.

Innumerable other considerations may also be relevant, in particular circumstances, to a determination of fact by the appeal commissioners. But if there is evidence to justify a finding of fact, it is unlikely that it will later be upset by the court merely because, had it been left to them in the first place, the court would have reached a different decision. The crucial importance, in any subsequent proceedings, of the facts brought out before the appeal commissioners in the first place will therefore be apparent.

K. B. E.

Landlord and Tenant Notebook

SUPPLY OF REFRIGERATION

Penn v. *Gatenex Co., Ltd.* [1958] 2 W.L.R. 606; *ante*, p. 250 (C.A.), has given us an interesting account of a tenant's search, in novel but not out-of-the-way circumstances, for a cause of action; and if the case goes to the House of Lords (leave to appeal was given) further interesting and useful reading may follow.

The novel circumstances were these: the plaintiff tenant took, in 1942, a flat—one of twenty-four in a block—under an agreement describing the demised premises as "all that flat situate and known as . . . with the use of the fixtures and fittings therein belonging to the landlord." Other features were a covenant by the tenant to maintain, repair and keep the demised premises and all locks, bolts, glass, taps, gas and electric fittings of and in the demised premises belonging to the landlord in good and sufficient repair, and the usual landlord's covenant for quiet enjoyment. (There were also a number of inappropriate provisions dealing with the mowing of lawns, keeping of reptiles, etc.). The flat had no larder, but it contained a refrigerator designed to be "operated from" a central installation supplying all flats, and under the landlord's control. This plant was not in proper working order at the time; it worked "intermittently," and when the landlord sold the reversion to the defendant company in 1956 they discontinued the supply altogether. An engineering concern had already declined to accept a maintenance contract, and when the action was heard in the county court, evidence was given that it would cost £500 to put the apparatus in order—if (which was not admitted) certain spare parts were obtainable.

The tenant sought to establish that the failure to supply refrigeration constituted (i) a breach of the covenant for quiet enjoyment, (ii) a derogation from grant, and (iii) a breach of an implied term of the contract of tenancy; or at least one of these things. He succeeded in satisfying the county court judge and Sellers, L.J., on point (iii), but not Lord Evershed, M.R., and Parker, L.J.; and the appeal against the judgment in his favour was allowed accordingly.

Breach of covenant for quiet enjoyment and alleged derogation from grant are causes of action which, a cynic might observe, are invoked by tenants who can find no other, and I will deal with the fate of the arguments on these issues first.

Quiet enjoyment

The decision shows that that in *Booth* v. *Thomas* [1926] Ch. 397 (C.A.) was not as epoch-making as was once supposed. That case has been regarded as settling the question whether an omission as opposed to a positive act could infringe a covenant for quiet enjoyment. A Salvation Army hall vested in the plaintiff had been damaged as the result of the bursting of a culvert on adjoining land belonging to his landlord and, supported by *dicta* in older authorities—notably Cotton, L.J.'s "I agree that an act of omission may be tantamount to an act of commission so as to be a breach of the covenant" in *Anderson* v. *Oppenheimer* (1880), 5 Q.B.D. 602 (C.A.), and Vaughan Williams, L.J.'s "There may, no doubt, be a breach of the covenant by an act of omission, but it must be the omission of some duty" in *Cohen* v. *Tannar* [1900] 2 Q.B. 609 (C.A.)—the court held that the failure to keep the culvert in repair was a breach of the covenant for quiet enjoyment. I think it can fairly be said that some of the judgments in *Booth* v. *Thomas* stress the neighbour-to-neighbour duty more than others, and there was also some suggestion that the "continuing use of the culvert" while unfit was a positive wrong; but interruption of quiet enjoyment by omission was established. What *Penn* v. *Gatenex Co., Ltd.*, has now laid down is that there must, as Vaughan Williams, L.J., indicated, be a breach of some other duty. The effect may be that a tenant might, *qua* tenant, be able to recover more in the way of damages than if the tort were the only wrong.

Derogation from grant

In so far as the plaintiff relied on alleged derogation from grant, the claim was defeated by reference to the simple statement that the restriction on derogation cannot enlarge the grant. Probably the nearest the plaintiff could get to bringing the facts within the principle was by claiming that they were analogous to those of *Aldin* v. *Latimer Clark, Muirhead & Co.* [1894] 2 Ch. 437, in which a landlord who had let land and sheds for the express purpose of use for, *inter alia*, drying timber was held to have derogated from his grant by erecting, on adjoining land, buildings which obstructed the passage of air to those sheds. But the judgment of Stirling, J., spoke of the principle by which a grantor is obliged to abstain from *doing anything* on adjoining property belonging to him which would prevent the land granted from being used for the purpose for which the grant was made; and it could not be said that by ceasing to generate and transmit electric current the defendant company had "done anything."

Necessary implication

Two "furnished house rent tribunal" decisions of divisional courts, though not, of course, binding, were treated by the Court of Appeal with respect, one having stood unchallenged (Parker, L.J.) for ten years; which suggests that such decisions mature more rapidly than they used to.

In *R.* v. *Paddington and St. Marylebone Rent Tribunal; ex parte Bedrock Investments, Ltd.* [1947] K.B. 984 ("the

Bedrock case") (affirmed on another point: [1948] 2 K.B. 413 (C.A.)), a house had been converted into flats and these had been let unfurnished; but the tenants "had the right" to use the water closets, lavatory accommodation and bathrooms in the buildings. Some of the tenants having referred their contracts to the tribunal on the footing that they "included payment for the use of services" (Furnished Houses (Rent Control) Act, 1946, s. 2 (1)), the tribunal reduced their rents, taking the view that those rents included payment for hot water supplied to the bathrooms, and also for electricity for lighting which the landlords in fact supplied. Granting an order of certiorari, the divisional court held that there was no ground for implying a covenant; none ought ever to be implied unless it was necessary, and it was not.

The decision in *R.* v. *Croydon and District Rent Tribunal; ex parte Langford Property Co., Ltd.* [1948] 1 K.B. 60 arose out of facts in which the tenants of the flats concerned had rather a stronger case: at least one of them had seen, before taking the flat, a notice board displayed outside the building which announced: "Flats to let. Central heating, constant hot water"; a representative of the landlords had referred to those features as services provided; and the tenant said that he would not have taken the flat at the rent asked if he had not understood that central heating and hot water would continue to be provided. The tribunal considered that it had jurisdiction because there was a collateral contract for those services; their counsel, when Goddard, L.C.J., put the awkward question: "A collateral agreement is surely an independent agreement. How can it form part of the contract of letting?", urged that in the leading ("drains in order") case of *De Lassalle* v. *Guildford* [1901] 2 K.B. 215 (C.A.), the "collateral undertaking" had been held to be a warranty and part of the contract. But the decision—Macnaghten, J., dissenting—was that as it was not necessary to imply a covenant for central heating and hot water, none ought to be implied; while if such a covenant had been omitted from the agreement by mistake, the tenant's remedy was rectification, *after* which the contract could be duly referred.

There was no reference to the use of the fixtures and fittings in the last-mentioned case, and the argument advanced for the tenant in *Penn* v. *Gatenex, Ltd.*, invited the court to distinguish the decision accordingly; but without success. Again the principle of no implication if unnecessary was applied—Sellers, L.J., dissenting.

"Landlord's fixtures"

Sellers, L.J., did not express himself in favour of overruling the divisional court decisions, but he considered that hot-water radiators or pipes present in a flat, which "went with" the demised premises, were not quite in the same category as a refrigerator; and that if an agreement gave a tenant the use of something wholly in the occupation and control of the landlord, such as a lift, it would be accepted that the landlord was obliged to maintain the lift, especially if (being a lift) it were the only means of access.

One might challenge the analogy; but what is particularly interesting is the importance attached to the words "the use of the fixtures and fittings belonging to the landlord" not only in Sellers, L.J.'s dissenting judgment but in those of the majority.

Counsel for the landlords had in fact conceded (as he could afford to) that if the refrigerator had been specified the tenant would have been in a stronger position, and both Lord Evershed, M.R., and Parker, L.J., expressed their agreement with this proposition, giving us *dicta* which, if the decision stands, may prove useful. But what has rather perplexed me when reading the report is the importance attached to the words to which I have referred; for there is much to be said for the proposition that they are completely otiose.

I am aware that many leases and agreements contain similar phrases, as do policies of insurance; but over 100 years ago, in *Elliott* v. *Bishop* (1854), 10 Ex. 496, Martin, B., drew attention to the inaccuracy of the expression "landlord's fixtures." There was, indeed, already authority, e.g., *Colegrave* v. *Dias Santos* (1823), 2 B. & C. 76, that the grant of a house passes the fixtures unless specifying some can be found to imply exclusion of others (*Hare* v. *Horton* (1833), 5 B. & Ad. 715) (conveyance cases); and appurtenances now pass, *prima facie*, by virtue of what is now the Law of Property Act, 1925, s. 62. The distinction between removable and irremovable fixtures is, of course, a different matter concerning only those affixed by tenants.

Indeed, one may perhaps wonder why the refrigerator in *Penn* v. *Gatenex, Ltd.*, was considered to be a fixture at all (as Lord Evershed, M.R., clearly held it to be). In *Boswell* v. *Crucible Steel Co.* [1925] 1 K.B. 119 (C.A.), Scrutton, L.J., dealing with the question whether plate glass windows were "landlord's fixtures" (which the tenants concerned had undertaken to keep in good repair), said: "... I have always had a difficulty in understanding what is meant by 'landlord's fixtures' ... If these windows could be treated as landlord's fixtures, the whole house would be a landlord's fixture," and Atkin, L.J.: "... I am quite satisfied that they are not landlord's fixtures, and for the simple reason that they are not fixtures at all in the sense in which that term is generally understood." Could not the same be said of a built-in refrigerator discharging the functions of a larder?

R.B.

"THE SOLICITORS' JOURNAL," 1st MAY, 1858

THE following is a selection of the questions in The Law Society's Easter Examination published in THE SOLICITORS' JOURNAL on the 1st May, 1858: Common and Statute Law and Practice of the Courts: What is the meaning of a *local* and of a *transitory* action? And what actions are local and what transitory? Will an action of debt lie upon a mortgage deed in which there is a covenant to pay principal and interest on a day which is past? What is the difference between a specialty debt and a simple contract debt? At the end of what periods respectively are such debts barred by the Statute of Limitations? Is a tender good if clogged with any, and what, conditions? Criminal Law and Proceedings before Magistrates: How many kinds of sessions of the peace are there? And what are the times for holding quarter sessions of the peace? What is the prosecutor's and what the prisoner's right of challenge in felonies and misdemeanours? Define conspiracy. If a person is indicted at sessions for housebreaking and, upon its appearing that the offence amounted to burglary, the Court direct an acquittal and order him to be indicted at the assizes for burglary, is the plea of *autrefois acquit* a good plea to such indictment? If *A* in London consigns goods to *B* in Liverpool and delivers them to *C*, a carrier, to be conveyed by him to *B*, and the goods are stolen on the way, in what county or counties would you lay the venue in the indictment for the larceny ...?

HERE AND THERE

TENANTS' FEAST

A PARAGRAPH in *The Times* recently reported a remarkably pleasant gathering in the Hall of Winchester College, a gathering which seemed almost to have been evoked from an older England of personal relationship before mass agglomerations and remote control reduced the human person to the status of a mere statistical unit. Anyhow, a very different view of life from the one now dominant was expressed in the dinner given by the Church Commissioners at Winchester to the tenant farmers who work some 14,000 acres in Hampshire, Sussex, Surrey and Essex. It is now four years since the Commissioners devised this modern version of the rent audit dinner as a cement of the landlord and tenant relationship and a convivial affirmation of their own accessibility. In the great days of the great estates such occasions were, of course, a commonplace part of the English way of life. Readers of Kilvert's Diary will remember the account of rent day at Llanthony Abbey, half ruin, half inn, in the Black Mountains near the Brecon border. It was Midsummer Day, 1870. "When we entered the Abbey precincts the courtyard was swarming with people. Some were walking about, some sitting down under the penthouse on either side of the Abbey tavern door, some standing in knots and groups talking. The kitchen too was buzzing and swarming like a hive. Beauchamp came forward and met us and we were shown into the upper room. Here the servant girl Sarah told us that it was Mr. Arnold Savage Lander's rent day. Mrs. Beauchamp came in and said she was afraid she could not cook anything for us as there was so much cooking going on in the kitchen for the tenants' dinners. However, she promised us some bread, butter, cheese and beer and boiled eggs. Whilst these things were being got ready, we amused ourselves by looking out of the window at the people in the green courtyard below. A tent, or rather an awning, had been reared against the wall of the Lady Chapel. . . . The cloth was spread on the table. No viands had yet appeared but a savoury reek pervaded the place and the tantalised tenants walked about lashing their tails, growling and sniffing up the scent of food hungrily like Welsh wolves. . . . We amused ourselves by watching the dinner being carried out and the ways and customs of the natives in taking their food. They were an uncommonly short time about it and the dishes were changed fast. The agent took the head of the table and Beauchamp as steward sat next to him."

SPREAD THE PRACTICE

WELL, that's how it was and that surely is the way to pay and receive your rent, and in the dwindling of that sort of personal relationship social disharmony has swelled. But still the instinct lingers that that is the way to go about life and it lingers because there is an essential rightness about it. When Gray's Inn Hall was rebuilt after the war the first dinner (I think) served in it was one at which the Benchers entertained the workmen who had done the job. Work is still being done on the Inn and it might not be a bad idea to repeat the gesture. About the same time the Chatham magistrates celebrated the opening of their new court with a luncheon to eighty guests epitomising the whole work of the court, counsel, solicitors, cleaners, regular spectators from the public gallery and even a lady convicted of a parking offence to whom the chairman handed a gilt-edged invitation saying: "As yours is the first case to be heard in the new court the magistrates will pay your fine of five shillings themselves." The secretary of a Member of Parliament was telling me to-day how much she hates the strawberry season, bringing an enormous blackmailing demand from her Member's constituents for strawberry and cream teas on the terrace. So since the instinct is still alive that hospitality and conviviality help along public relations as well as private relations, master and servant relations as well as buyer and seller relations, the sooner this civilising influence becomes re-established the better. The Commissioners of Inland Revenue should entertain relays of taxpayers and sur-tax payers to banquets at Somerset House. They could be selected by the premium bonds system. Banquets to estate duty payers might at first sight seem a somewhat grisly proposition, but, after all, is not the wake well established in Ireland?

> "The man that's dead would grudge no man
> Another while to walk the earth;
> He'd be the first to fill a can—
> So let us drink his health again
> At his hospitable hearth."

And if it was at the expense of the Estate Duty Office, how much the better. Local authorities could do as much for ratepayers. The Lord Chancellor could follow his breakfast to the legal profession at the opening of the legal year with a litigants' luncheon or dinner. How much would it sweeten the bills of costs!

RICHARD ROE.

Mr. ALBERT EDWARD SAMUELS, solicitor, of High Holborn, London, W.C.1, and Reigate, Surrey, has been elected chairman of the London County Council for 1958–59.

Mr. RONALD CHARLES WEBB, solicitor, of Brighton, has been appointed Coroner for Brighton on the retirement of his father, Mr. Charles Webb, after twenty-three years' service.

John Charles Sutcliffe, practising as Messrs. Outhwaite & Sutcliffe at Prudential Chambers, Albert Road, Middlesbrough, and High Green, Great Ayton, Yorks, announces that he has taken into partnership Peter Hird Scott, who has been associated with the practice for some time. The name of the firm remains unchanged.

Alderman Sir George Bernard Lomas-Walker, solicitor, of Leeds, has retired from Harrogate Town Council after forty-six years in local government work.

The SOLICITORS' ARTICLED CLERKS' SOCIETY announces the following forthcoming programme:—

13th May: *Scottish Reels*. At The Law Society's Hall at 6.30 p.m.

20th May: *A Playreading*. At The Law Society's Hall at 6.30 p.m. The playreading will be preceded by a short business meeting of the newly formed drama group to discuss its future programme.

27th May: *Informal "Hop."* In the Members' Dining Room at The Law Society's Hall at 6.45 p.m.

4th June: *Theatre Party*. Brian Burrett has obtained a limited number of tickets for "My Fair Lady." Those persons wishing to obtain tickets should telephone him at HOL. 0874.

Mr. D. W. Gaskell, solicitor, of Beaconsfield, Bucks., left £25,551 (£25,156 net).

Country Practice

ADVERTISEMENT RESISTANCE

As someone or other pointed out in connection with, I think, the appeal for spastics, it is possible to read an advertisement and yet close one's mind to its content. I was reminded of this in connection with a felt hat which my young son borrowed from me recently.

In the village wherein I reside (hereinafter referred to as "our village") a solicitor cannot hope to be ignored. Our village is far beyond the stockbroker belt, and a professional man is allowed no bushel under which to hide his light. Auditing score cards at village whist drives, judging grotesque faces in the horse collar contest at the annual fête, performing the duties of secretary's spouse to the women's institute, are some of the tasks for which, our village thinks, a legal training is desirable. Happy, or perhaps unhappy, is the solicitor who each evening can be swallowed up unnoticed in some vast dormitory area. In our village, a solicitor's movements are kept under strict review, so that a representative of the British Legion or the cricket club can be pretty certain of obtaining a legal opinion as to running a small lottery between my arrival at the garden gate and reaching my front door.

Our village thinks it would be a mistake to miss the solicitor off any committee, and that is why I am on the Boy Scouts committee. We hold an annual sale in the village hall. The last one was so successful that the scoutmaster decided, by way of thanks, to follow it up by inviting the entire village to a concert. We left the details to him and his assistant; my contribution to the entertainment being a felt hat for use by my son in the part of Peter Gurney in the Widdecombe Fair song.

As the night of the scout concert drew near, rumours were allowed to circulate as to some of the "turns." Among other attractions there was to be a skiffle group, invited from a neighbouring residential school for badly crippled children. I must admit, when the night of the concert arrived, that the thought of skiffle depressed me as I made my way to the large Nissen hut used by the scouts. Not being a televiewer, I had somehow avoided all contact with this art. However, as a committeeman, and as a parent of Peter Gurney, I knew where my duty lay.

The concert was in fact a howling success. The troop, or troupe, put on sketches with local allusions—not, in cold print, very funny, but in the warmth of the crowded hut sheer perfection in wit. The camp fire songs went down equally well. Then, after another sketch, the skiffle group arranged themselves for their onslaught. One or two members of the group did not arrange themselves, because they could not; but the adult guitarist—a master from their school—soon had the most helpless children sitting in their correct places. If you cannot use your legs, you can still join a skiffle group, and rattle pebbles in an empty syrup tin, or strum on a washboard. If you cannot use your arms properly, you can sing.

Quite honestly I did not know, until then, what skiffle was. For any similarly ignorant reader, I should explain that it is rudimentary music with lots of tum-tum-tum about it. The latter effect, in the group I am describing, was produced by a boy standing on a resonant tea-chest and twanging upon a tight cord. By leaning on a broomstick, to which one end of the cord is fastened, you can alter the tautness of the cord and so produce a whole octave of tea-chest notes.

I like skiffle. The children put their hearts into it. The girl singers sang of the Red River Valley as if they were riding their palominos lazily home to the ranch-house. The boys rendered—and I can think of no better word—a piece entitled Puttin' on the Style with all the zest of those college boys in those second feature films. But at least they caught the spirit of America's tough young men; razzy, jazzy yankees impressing sub-debs at an American seat of learning, Hollywood style.

So the scout concert was a great success, and our village schoolmistress proposed a vote of thanks to the scouts and the skiffle group, and said that nobody need worry about English village life while such shows could be staged and so thoroughly enjoyed.

I was rather late in leaving the scout hut. The audience had all gone, and most of the performers had left when I finally stepped into the coldness, the freshness and the wet of the drizzly evening. I was, therefore, rather astonished, as I made my way across the field, to hear from ground level a young voice saying "Please sir, would you mind pickin' me up?" It was one of the skiffle group, helpless in the mud.

I wish, sometimes, that I could pay more attention to advertisements.

"HIGHFIELD"

The Law Society has awarded the following special prizes for the year 1957: The Scott Scholarship: Gerard Boyle, M.A. (Cantab.); The Broderip Prize for Real Property and Conveyancing: John McGlashan, LL.B. (Liverpool); The Clabon Prize: Gerald Dworkin, LL.B. (Nottingham); The Maurice Nordon Prize: Gerald Dworkin, LL.B. (Nottingham) and Stephen Anthony Rayner, LL.B. (London); The Robert Innes Prize: The Examiners reported that there was no candidate qualified for this Prize; The John Marshall Prize: Gerard Boyle, M.A. (Cantab.); The Local Government Prize: John Ambrose Morgan, LL.B. (Liverpool); The Justices' Clerks Society's Prize: Francis Nuttall; The Samuel Herbert Easterbrook Prize: John Neil Porter; The Geoffrey Howard-Watson Prize: John Selwin Edward Greene; The Cecil Karuth Prize: Gerald Abraham Waller, LL.M. (London); The Reginald Pilkington Prize: The Examiners reported that there was no candidate qualified for this Prize. LOCAL PRIZES.—The Timpron Martin Prize for Liverpool Students: John McGlashan, LL.B. (Liverpool); The Atkinson Conveyancing Prize for Liverpool or Preston Students: John McGlashan, LL.B. (Liverpool); The Rupert Bremner Medal for Liverpool Students: John McGlashan, LL.B. (Liverpool); The Birmingham Law Society's Gold Medal: The Examiners reported that there was no candidate qualified for this Prize; The Birmingham Law Society's Bronze Medal: John Martin Beale, LL.B. (Birmingham); The Stephen Heelis Gold Medal for Manchester and Salford Students: Mordecai Rabinovitch, LL.M. (Manchester); The Newcastle upon Tyne Prize: William Turnbull, LL.B. (Nottingham); The Wakefield and Bradford Prize: Brian Wood Ravenscroft, LL.B. (Durham); The Sir George Fowler Prize: William James Michael White; The Frederic Drinkwater Prize: Dennis Oscar Diamond, B.A. (Cantab.); The Render Prize: John Alan Pickard; The Mellersh Prize: William Robert Briggs, B.A. (Oxon); The City of London Solicitors' Company's Prize: Robert Lowe, LL.B. (London); The City of London Solicitors' Company's Grotius Prize: Robert Lowe, LL.B. (London); The Alfred Syrett Prize: Martin George Henry Bell and John Patrick Yerbury; The William Hutton Prize: Michael Cronin, LL.B. (Birmingham), and David Noel Spark, B.A. (Oxon).

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the "Points in Practice" Department, "The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Section 11 (2), proviso—Letting to Subtenant of Vacant Rooms in Same House

Q. A lawful subtenant occupies part of a house controlled by the Rent Acts. The remainder of the house is now vacant and, therefore, free from Rent Act control. The landlord, having been asked by the subtenant for the tenancy of the vacant rooms, proposes to let them to him, provided that the rooms remain free from control, at a separate rent and to provide him with a separate rent-book. Can the letting of the vacant rooms to the subtenant enable him to claim that the whole house becomes subject to control?

A. In our opinion, the subtenant could not establish the apprehended claim. In order to bring the facts within the scope of the proviso to the Rent Act, 1957, s. 11 (2), he would have to show: (i) that he had, *immediately* before the grant, been the tenant under a controlled tenancy; and (ii) that the premises comprised in "one of the tenancies" were the same as, or consisted of, or included part of, the premises comprised in the other. We consider that the "tenancies" in the expression "one of the tenancies" refers to successive tenancies of the same premises and cannot apply to tenancies of different premises; consequently, if the subtenant in the case submitted were to set up that he held a tenancy of premises including part of premises of which he had held a controlled tenancy, the effective answer would be that (i) he does not hold a tenancy of the house, or (ii) that if the two agreements could, by straining language, be held to constitute the grant of a tenancy, he had not, *immediately* before the grant, been the tenant of premises which were either "the same as, or consisted of, or included part of, the premises comprised in the other."

Schedule I—Disrepair—Damage by Fire

Q. A client of ours, the owner of a big estate, has a number of cottages which come within the provisions of the Rent Acts. He has put the following conundrum to us: "What is my position if I do not insure these against fire and they are burned down or damaged?" We find it difficult to advise him. There appear to be no agreements but if there are any we expect he undertakes to do the usual repairs of main walls, roofs and main timber. We do not anticipate that in any case provision is made for cesser of rent in case of fire. It is, of course, open to any tenant to give notice of lack of repair under the recent Act. Our client is not the kind of man who would demand rent from a tenant while a house was uninhabitable, but he is wondering if he is under any liability to restore the premises.

A. In any case in which there was an express covenant to repair by the landlord, we consider that he would be liable for damages. But such damages would be assessed as the diminution in value, to the tenant, as from the date of notification of destruction or damage: *Hewitt* v. *Rowlands* (1924), 93 L.J.K.B. 729; they would not include incidental expenses incurred by the tenant in living elsewhere: *Green* v. *Eales* (1841), 2 Q.B. 225; and the tenant would, we agree, remain liable for rent. *Hewitt* v. *Rowlands* is also authority for the proposition that the fact that the premises are controlled makes no difference; but where there is no covenant the question is indeed a difficult one. In our opinion, though such was undoubtedly the object, it would not be possible to confine "defects which ought reasonably to be remedied, having due regard to the age, character, and locality of the dwelling" (Rent Act, 1957, Sched. I, para. 3) to ordinary "dilapidations" by stressing the "reasonably," which, we consider, qualifies the "having regard to the age, etc.," and has nothing to do with how the defects came about; but we do consider that the word "defects" itself might be held not to cover disrepair caused by fire, Pt. II of the Schedule being essentially concerned with what s. 1 calls "adjustment of rent." In the event of destruction it might be possible, in some cases, to determine a controlled tenancy by notice to quit, i.e., if the tenant had no *animus revertendi*: see *Brown* v. *Brash* [1948] 2 K.B. 247; *Denman* v. *Brise* [1948] 1 K.B. 22.

REVIEWS

Encyclopædia of Housing Law and Practice. General Editor: Percy Lamb, M.A., Q.C., of Gray's Inn and the Middle Temple, 1958. London: Sweet & Maxwell, Ltd. £7 7s. net. (including service for 1958).

This new work, in one looseleaf volume, is attractively produced—more so indeed than the prototype from the same publishers, "The Encyclopædia of Planning, Compulsory Purchase and Compensation." There are four sections of the text, each clearly separated by guide cards, and a reasonably adequate but not over-generous index. The first section consists of an introduction of some 60 pages, in which is given a paraphrase of the Housing Act, 1957, a few comments on such subjects as housing improvement grants and guarantees of building societies' advances, and several chapters on compulsory purchase procedure.

The second section consists of an annotated print of all the Acts relating to housing. The learned general editor explains in his preface that he has seen fit to include the whole of the law relating to compulsory purchase of land, and consequently a print is included of the Lands Clauses Consolidation Act, 1845, the very full notes to which seem to have been imported almost verbatim from the publishers' other Encyclopædia above mentioned. The first issue has of course appeared too soon to include the Housing (Financial Provisions) Act, 1958, to which it is anticipated that Royal Assent will have been given by the time these comments are published, but no doubt this will be the subject of the first re-issue under the "service" which, the publishers tell us, will cost approximately two guineas a year after 1958. Incidentally this first re-issue will make a lot of what now appears in the book obsolete. The notes to the statutes seem to have been carefully prepared, and they are certainly a good deal fuller than they were in the advance issue of the 1957 Act, or in "Current Law Statutes." To the busy private practitioner they will probably give all he needs to know, but the local government lawyer will at times need more than can be found here.

The third section is a print of the relevant regulations, and the fourth section contains the Circulars of the Ministry issued since 1946.

We doubt whether the publishers' enterprise in publishing a looseleaf book on this subject will really be justified—there is

a certain dislike of looseleaf in the profession, partly because the office boy cannot be trusted to insert the re-issue pages correctly! Also we are not quite satisfied that housing is an appropriate subject for this treatment; the law does not change in matters of detail with the same frequency as does planning law, and once the second consolidating Act has come into operation, there is perhaps some hope of stability for a few years. The inclusion of "practice" in the title of this work may be misleading to some readers, as it is clearly understood by the General Editor and his learned team in the lawyers' sense, and not as it would be understood by a local government officer. Housing management finds virtually no place at all, and the difficult subject of finance is dealt with—apart from the relevant circulars—merely by a paraphrase of the Housing Subsidies Act, 1956.

The price seems high, even by modern standards, but events may justify it if the issues for 1958 prove to be more bulky than would appear probable at the time of writing.

An Englishman Looks at the Torrens System. By THEODORE B. F. RUOFF, Solicitor of the Supreme Court. 1957. Australia: The Law Book Co. of Australasia Pty., Ltd. £1 5s. net.

The author of these essays expresses the view that he would have the greatest difficulty in hunting down a round dozen of his professional brethren who have ever heard of Sir Robert Torrens. Perhaps this is a slight exaggeration, as the Torrens system of registration of title is well known to many people who have been concerned with registered land in other parts of the Commonwealth, and was frequently mentioned by Sir Ernest Dowson and Mr. V. L. O. Shephard in the Colonial Research Publication entitled Land Registration. Sir Robert Torrens was responsible for the enactment by the legislature of South Australia of the Real Property Act, 1857, which became law on 27th January, 1858. His reforms spread rapidly through Australia and New Zealand, and have been adopted elsewhere in the Commonwealth, particularly in the provinces of Canada.

After many years' experience at Her Majesty's Land Registry in London, the author was awarded a travelling fellowship, and so was able to travel and study other systems of registration of title. This book brings together articles on the Torrens system contributed in various legal journals of Australia, Canada and New Zealand, and appears on the occasion of the centenary of the Real Property Act.

Although a chapter explains the principles and ideals of the Torrens system, readers familiar with the English system of registration of title would have been helped by a clear explanation of the differences. The text is, however, very interesting, and some of the comments are somewhat surprising. It is pleasing to find the statement that "the whole business of registration ought to be conducted with such an economy of public manpower, public time and public money, that the saving which is achieved far outweighs any payment of compensation for errors or omissions which may become necessary from time to time." The author shows no great desire to preserve an insurance fund, but rather an anxiety that the fund should be used liberally to provide compensation for loss.

The title of the collection of essays is somewhat unfortunate, because they go beyond an examination of the Torrens system. For instance, a chapter on modern problems deals at some length with the registration of title to flats, after asking whether it has occurred to the reader "that in matters of land transfer the customer is always right." To an English reader, by far the most interesting chapter is that devoted to claims against the English insurance fund. The author's analysis of the circumstances in which compensation should be paid, and particularly his discussion of *Re Chowood's Registered Land* [1933] Ch. 574 and *Re 139 Deptford High Street* [1951] 1 Ch. 884, although largely reprinted from the *Conveyancer, N.S.*, vols. 18, 19 and 20, well justify study by any solicitor concerned with a claim against the fund; not least value arises from a summary of claims made against the fund.

The author might well consider the possibility of writing a critical comparison of systems of land registration.

Income Tax Principles. Third Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A., and K. S. CARMICHAEL, A.C.A. 1958. London: H.F.L. (Publishers), Ltd. 12s. 6d. net.

This admirable little book is, it appears, directed principally towards students for the intermediate accountancy examinations, and as such it is very suitable for anyone else coming to the study of income tax for the first time. In its opening paragraph the author asks the student to approach the book as though it were a novel, in the hope that in the end he will come to like income tax as much as does the author. Unfortunately it is to be feared that only the minority of us will ever like income tax as a subject of study, but this book presents its elements as attractively as they can be presented and does so by concentrating upon general principles rather than particular instances. It must not, however, be assumed from this that the treatment is superficial; indeed pp. 73–78 contain an account, with arithmetical examples, of the practice on a change of accounting dates which is as good as anything your reviewer has seen. As is to be expected with the qualifications of the authors, there is a plentiful supply of helpful arithmetical illustrations. For these days the book seems very reasonably priced having regard to its quality of production.

Hanson's Death Duties. Tenth Edition. Second Cumulative Supplement. By HENRY E. SMITH, LL.B. (Lond.). 1958. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

The first supplement, which this replaces, stated the law as at 1st December, 1956, and this states it as at 1st January, 1958. In addition to offering comments upon the judicial decisions of the year, some twenty pages are devoted to the new provisions of the Finance Act, 1957, dealing with gifts *inter vivos*. These provisions are involved and difficult and will no doubt, in due course, have to be considered by the courts. Until they have been considered the commentary in this supplement is by far the most helpful discussion of them that we have yet seen, and no user of the parent volume should fail to possess himself of this supplement.

The Stock Exchange Official Year-Book, 1958. Volume 1. Editor-in-Chief: Sir HEWITT SKINNER, Bt. London: Thomas Skinner & Co. (Publishers), Ltd. Two volumes, £8 net.

In this edition of the Stock Exchange Official Year-Book, the Financial Trusts, Land and Property section has been divided into two sections in order to conform with the change made in the Stock Exchange Official List, namely Financial Trusts, Land, etc., and Property. The company notices include particulars of about 4,000 securities quoted on the Stock Exchange.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Enquiries of Local Authorities

Sir,—One is requested to N.B. (Note well) on the forms of enquiries, that—

"The *replies* below are furnished after appropriate enquiries, and in the *belief* that they are in accordance with the information at present available to the officers of the council, but on the distinct understanding that neither the council nor any officer of the council is legally responsible therefor."

Similar sayings appear on certificates issued by some local authorities regarding such matters as alterations in house numbers, street names and the like.

It has occurred to me to cogitate what action would be taken by a judge if a witness giving evidence said:—

"I swear that the evidence I shall give to the court shall be the truth, the whole truth and nothing but the truth, but I am not responsible for what I am saying."

IGNORAMUS.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

COMPANY: APPOINTMENT OF DIRECTORS: WHETHER ELECTED ON DAY OF POLL OR WHEN RESULT DECLARED

Holmes and Another *v.* Keyes and Others

Jenkins, Romer and Ormerod, L.JJ. 25th March, 1958

Appeal from Danckwerts, J. ([1958] 2 W.L.R. 540; *ante*, p. 231).

On 23rd December, 1957, at a general meeting of the *G.* Co., a poll was taken on resolutions for the election of the defendants to be directors. The voting was completed on that day, but the counting did not take place until the following day, 24th December, when the scrutineers informed the company that the defendants had been elected. The company's articles required that the qualification of a director should be the holding of 500 shares in the capital of the company and that, in accordance with s. 182 of the Companies Act, 1948, he should obtain that qualification within two months after his appointment. The articles further provided that a transferor of shares should be deemed to remain the holder of shares until the name of the transferee was entered in the company's register. The defendants' names were not entered into the company's register as holders of the requisite number of qualification shares until the afternoon of 24th February, 1958. On a motion to restrain the defendants from acting as directors of the company, the plaintiffs contended that the defendants were elected on 23rd December, 1957; that, therefore, the period within which they must obtain their qualification began to run at midnight on 23rd/24th December, 1957; and that the entry of the defendants' names in the register on 24th February, 1958, was too late. Danckwerts, J., granted the injunction sought. The defendants appealed.

JENKINS, L.J., said that the articles of association of the company should be regarded as a business document and should be construed so as to give them reasonable business efficacy, where a construction tending to that result was admissible on the language of the articles, in preference to a result which would or might prove unworkable. In his view, the doctrine of relation back, for which the plaintiffs contended, would produce a wholly unreasonable result, and he declined to adopt it unless constrained to do so by the terms of the Act and the articles. He could find nothing in the Act or the articles which constrained him to do so. In his judgment, the ascertainment of the result should be considered as part of the poll and, consequently, there could be no appointment of a director by a general meeting until the result of the poll was ascertained. It was only then that the appointment could become in any sense effective. He thought that, in effect, the meeting should be treated as continuing until the result of the voting on the poll was ascertained. Unless the appointment began when the result of the poll was ascertained and on no earlier date, it would be impossible for the company to know who its directors were. It seemed to him that produced a really quite impossible result. It also seemed to him to be contrary to principle to place a man under a duty to acquire qualification shares, on the footing that he had been elected as a director, at a period when it was not known whether the resolution appointing him a director had been carried or not. It followed that, on this view, the registration of the defendants' names on 24th February was within time. He would allow the appeal.

ROMER and ORMEROD, L.JJ., delivered concurring judgments. Appeal allowed. Leave to appeal refused.

APPEARANCES: *J. E. S. Ricardo* (*Alistair Thomson*); *Gerald Gardiner*, Q.C., and *T. D. D. Divine* (*A. Kramer & Co.*); *Denys Buckley* (*Herbert Oppenheimer, Nathan & Vandyk*); *Gilbert Beyfus*, Q.C., and *Paul Sieghart* (*Basil Greenby & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 772

PASSING OFF: TRADE MARK: BONA FIDE USE OF OWN NAME

Baume & Co., Ltd. *v.* A. H. Moore, Ltd.

Jenkins, Romer and Ormerod, L.JJ. 28th March, 1958

Appeal from Danckwerts, J. ([1957] 3 W.L.R. 870; 101 SOL. J. 903).

The plaintiffs, an English company, carried on the business of the sale of watches and were the proprietors of the registered trade mark " Baume." The defendant company, who carried on business in the sale of (*inter alia*) watches, sold watches bearing the mark " Baume & Mercier, Genève," or " Geneva "; these watches were manufactured by a Swiss company called Baume & Mercier S.A., who had manufactured watches for many years. In an action to restrain the infringement of a registered trade mark and passing-off, Danckwerts, J., held that, though there was some risk of confusion, the use of the name " Baume & Mercier, Genève," was a bona fide use on the defendants' goods of the name of the manufacturer; that s. 8 (*a*) of the Trade Marks Act, 1938, protected such use of the manufacturers' name as a trade mark; and that such bona fide use afforded also a defence to passing-off. The plaintiffs appealed. *Cur. adv. vult.*

ROMER, L.J., delivering the judgment of the court, said, on the question of passing-off, that it followed from the second of the three principles enunciated by Buckley, L.J., in *John Brinsmead & Sons, Ltd.* v. *Brinsmead & Waddington & Sons, Ltd.* (1913), 30 R.P.C. 493, at p. 506, that the defence of innocent and honest user of the manufacturer's name on the watches which the defendants had sold would not avail them as a defence if the other ingredients of an action for passing-off were established. In their lordships' judgment the plaintiffs had established on the evidence that the sale by the defendants of Baume & Mercier watches was reasonably calculated to cause confusion in the trade and in the minds of the public, and, accordingly, the claim in passing-off succeeded. In those circumstances it became in strictness irrelevant to consider, or adjudicate upon, the arguments which had been propounded on the trade mark aspect of the case. As, however, several points were raised and argued before them upon the subject, the court would briefly express their provisional views upon these points. In their view, inasmuch as the defendants had incorporated the whole of the plaintiffs' registered mark in their own mark, albeit that it contained in addition the words " & Mercier, Genève," or " Geneva," the defendants were in breach of s. 4 (1) of the Trade Marks Act, 1938; but that as the use of such name was a bona fide use on the defendants' goods of the name of the manufacturer they were protected by s. 8 (*a*) of the Act of 1938, which protected such use of the manufacturers' name as a trade mark. In the result, the court was of opinion, for the reasons stated, that the plaintiffs were entitled to succeed on the issue of passing-off, and that the appeal should, accordingly, be allowed. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *Guy Aldous*, Q.C., and *John Whitford* (*Cummings, Marchant & Ashton*); *Sir Lionel Heald*, Q.C., and *F. E. Skone James* (*Stollard & Limbrey*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 797

BUILDING CONTRACT: SET-OFF: AWARD ON SET-OFF EXCEEDING AMOUNT CLAIMED

Hanak *v.* Green

Hodson, Morris and Sellers, L.JJ. 1st April, 1958

Appeal from Kingston-on-Thames County Court.

Under a building contract the plaintiff sued the defendant builder in the county court for damages for breach of contract. The defendant admitted the breach, but counter-claimed a set-off in respect of extra work done outside the contract and for trespass. The county court judge, revising the report of a referee to whom the respective claims had first been submitted, awarded the plaintiff £74 17s. 6d., and the defendant £84 19s. 3d., and ordered the plaintiff to pay the balance of £10 1s. 9d. to the defendant. He further gave the plaintiff the costs on her claim on scale 3, and the defendant his costs on the counter-claim, also on scale 3, and directed that the parties should share equally the costs of the reference. The defendant appealed, contending that his counter-claim should be treated as being a set-off and, therefore, the plaintiff should recover nothing, and he (the defendant) should recover £10 1s. 9d. and be awarded the costs of the proceedings.

MORRIS, L.J., in a reserved judgment with which HODSON, L.J., agreed, said that since the Judicature Acts there might be (1) a set-off of mutual debts; (2) in certain cases a setting up of matters of complaint which, if established, reduce or even

extinguish the claim, and (3) reliance on equitable set-off and reliance as a matter of defence on matters of equity which formerly might have called for injunction or prohibition. A cross-claim could be regarded as a set-off if in a court of law it would have been so regarded at the time of the Judicature Acts, or if it would have been regarded by a court of equity as the basis for equitable set-off or for giving protection on equitable grounds to a defendant. In the present case, on the authorities, a court of equity would say that neither of these claims ought to be insisted upon without taking the other into account. It would not be equitable for the plaintiff to recover the £74 17s. 6d. while the £84 19s. 3d. was owing by her under the contract. If the defendant had assigned his claim to £84 19s. 3d. and if his assignee had sued the plaintiff, the plaintiff would have been entitled to set off her £74 17s. 6d. The position would be comparable with that in *Young* v. *Kitchin* (1878), 3 Ex. D. 127. It would be a case where in equity the whole matter could be dealt with. The assignee would take subject to equities and the plaintiff, if sued for the £84 19s. 3d., would be entitled " by way of set-off or deduction " to the damages which she had sustained by the non-performance or faulty performance of the contract on the part of the defendant. Here the defendant had an equitable set-off which defeated the plaintiff's claim. This conclusion did not in any way depend upon the terms used in the defence to the counter-claim. The question as to what was a set-off was to be determined as a matter of law and was not in any way governed by the language used by the parties in their pleadings. Therefore, the defendant succeeded in defeating the claim of the plaintiff and in establishing his right to £10 1s. 9d. on the counter-claim. There should be judgment for the defendant on the claim with costs on scale 4 ; and judgment for the defendant for £10 1s. 9d. on the counter-claim with costs on scale 2 ; the costs of the reference should be taxed on scale 3 and should be treated as referable as to one-half to the plaintiff and one-half to the defendant.

SELLERS, J., delivered a judgment to the same effect. Appeal allowed. Leave to appeal refused.

APPEARANCES : *Alan Campbell* (*H. B. Wedlake, Saint & Co.*) ; *C. F. Dehn* (*Ashurst, Morris, Crisp & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 755

COPYRIGHT : WHETHER ASSIGNMENT TRANSMISSIBLE : ASSIGNMENT BEFORE 1911 : RIGHTS OF ASSIGNEE DURING EXTENSION PERIOD

Loew's Incorporated *v.* Littler and Others

Jenkins, Romer and Ormerod, L.JJ.

4th April, 1958

Appeal from Vaisey, J.

In 1905 an agreement was made between Leon and Stein, the authors, and Lehar, the composer of a German musical play known as " Die Lustige Witwe," and Felix Bloch Erben, a Berlin firm of dramatic agents. The agreement was in German and was governed by German law ; it provided that the firm should have assigned to it the sole rights of distribution of the work in theatres all over the world, of public performance and of translation into foreign languages, subject to the payment of the proceeds less a commission to the authors and composer. Pursuant to the rights so conferred, Felix Bloch Erben in 1906 entered into an agreement with George Edwardes, a theatrical producer, in the English language and subject to English law, which provided that " the said Felix Bloch Erben agrees to sell and the said George Edwardes agrees to purchase the sole rights of production in the English language in Great Britain and Ireland and the British Colonies and in the United States and Canada of ' Die Lustige Witwe ' . . . " There followed provisions for the production of the work in due time ; for the payment of weekly royalties ; for the payment of advance royalties, to be increased if Edwardes did not produce the work in London or New York by a specified date, and by a further provision : " In the event of the said George Edwardes failing to adhere to the terms set forward in this agreement all rights and interests in the said opera in the country in which it has not been produced within the stipulated period shall then and there revert to the said Felix Block Erben . . . " Edwardes, after producing the work with success under the title of " The Merry Widow," died in 1915, and by various assignments such rights as passed on his death became vested in the plaintiffs. The survivor of the two authors died in 1940 and the composer in 1948. At all times until action brought, royalties were paid to and accepted by Felix Bloch Erben, and neither they nor any representatives of the authors and composer challenged the plaintiffs' title. No notice was given pursuant to s. 24 (1) of the Copyright Act, 1911. In 1955, in consequence of a performance of the work in England not authorised by the plaintiffs, they brought an action against the producer and others concerned. The legal representatives of the authors and composer, and Felix Bloch Erben, intervened and were added as defendants, and it was ordered that the question of title should be tried between the plaintiffs and the added defendants. Vaisey, J., found that, according to German law, Felix Bloch Erben had no authority to grant to Edwardes rights transmissible on his death, and held that, on the true construction of the agreement of 1906, he received a mere personal interest terminable on his death. The Copyright Act, 1911, extended the period of copyright and provided by s. 24 (1) that where an author had before the Act assigned a right for its whole term, that right should re-vest in him at the date when, but for the passing of the Act, it would have expired, with a proviso that the assignee should be entitled at his option either—" (i) on giving such notice as is hereinafter mentioned, to an assignment of the right . . . for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration ; or (ii) without any such assignment . . . to continue to reproduce or perform the work in like manner as theretofore, subject to the payment, if demanded by the author . . . of such royalties . . . as, failing agreement, may be determined by arbitration . . . " The plaintiffs appealed.

ORMEROD, L.J., delivering the judgment of the court, said that a consideration of the arguments as to German law presented to the court indicated that Felix Bloch Erben were authorised by the agreement of 1905 to confer transmissible rights on their assignees. As to the agreement of 1906, it was indistinguishable in its terms from the agreement which was the subject of the dispute in *Messager* v. *British Broadcasting Co., Ltd.* [1928] 1 K.B. 660 ; [1929] A.C. 151, which was held to be transmissible. There remained the question of the plaintiffs' rights under s. 24 (1) of the Act of 1911 during the extended period of copyright conferred by the Act. The first option could not apply, as no notice had been given. The plaintiffs said that under the second option they should continue to have the rights granted by the agreement of 1906, i.e., the sole rights of production and performance in English in Great Britain ; but that could not be right, as it would be giving them the same rights as under the first option. The defendants contended that the second option gave to the plaintiffs merely the right to continue a run of the play existing at the time when the copyright would have expired but for the Act, and, further, that since the date of original expiration, they had never performed but merely authorised performances, and the second option carried no right to authorise. That was too narrow a view : the second option gave to the plaintiffs no exclusive rights, but they continued to enjoy non-exclusive rights to produce, perform, and authorise under the terms of the agreement of 1906. Appeal allowed.

Leave to appeal to the House of Lords.

APPEARANCES : *Charles Russell*, Q.C., and *F. E. Skone James* (*Wright & Webb*) ; *K. E. Shelley*, Q.C., *Guy Aldous*, Q.C., and *D. W. Falconer* (*Kenneth Brown, Baker, Baker*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 787

Chancery Division

TOWN AND COUNTRY PLANNING : DEVELOPMENT CHARGE : EFFECT OF PLANNING PERMISSION ON VALUE OF LAND

London County Council *v.* Central Land Board

Danckwerts, J. 12th March, 1958

Adjourned summons.

The London County Council, by virtue of the Housing Act, 1936, and in pursuance of a local order, acquired some 231 acres of land for development as a building estate. While most of the land was suitable for this purpose, heavy expenditure on site works was incurred in respect of part. This expenditure was greater than the value of the whole estate when valued for building purposes. Planning permission to develop the estate

was granted in 1949 and 1952, and apart from certain industrial development, that development was almost entirely carried out prior to 18th November, 1952. A dispute arose between the council and the Central Land Board over the exigibility of a development charge because of the provisions of the Town and Country Planning Act, 1947, s. 70 (2), which provides that in determining what development charge is to be paid in respect of any use of land, the board shall have regard to the amount by which the value of the land with the benefit of planning permission exceeds the value which it would have without the benefit of such permission.

DANCKWERTS, J., said that the council contended that because of the heavy expenditure on site works, the increase in value by reason of the permission was nil. On the other hand, the board contended that the sum of £22,500 was payable on the footing that it would be open to the board to assess the development charge on the basis that only those parts of the estate which an ordinary developer would consider it advantageous to develop from a commercial point of view would be developed and those parts of the estate which would involve abnormal development costs would be left undeveloped. The actual basis of the valuation to be made under s. 70 (2) was that the development the applicant proposed would be carried out, and, therefore, one had no right to assume that any part of the operation would not be carried out. It was to be observed that the value was to be based on the assumption that the operation would be carried out in regard to a particular portion, and was not merely the abstract value of the land with building or development permission. One must regard the value bearing in mind the particular circumstances of the application for development which was made. Furthermore, "land" in that subsection meant all the land in respect of which the application for permission was made. Therefore, the whole of the estate which the council had developed and the whole of the operations which they proposed to carry out must be taken into consideration, difficult and easy altogether. The result of that was that the enhanced value which they might have by virtue of permission in respect of part of the property included in the development plan was entirely wiped out by the heavy expenditure which they had had to incur under the plan in respect of the land which required expenditure before it could be developed. Accordingly, no development charge was recoverable. Declaration accordingly.

APPEARANCES: *Michael Rowe*, Q.C., and *H. E. Francis* (*Solicitor, London County Council*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 807**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Divorce (Insanity and Desertion) Bill [H.C.] [22nd April.
Holy Trinity Hounslow Bill [H.C.] [22nd April.
Marriage Acts (Amendment) Bill [H.C.] [22nd April.
Opticians Bill [H.C.] [22nd April.
Prevention of Fraud (Investments) Bill [H.L.] [22nd April.

To consolidate the Prevention of Fraud (Investments) Act, 1939, s. 117 of the Companies Act, 1947, and so much of the Companies Act, 1948, as relates to the enactments aforesaid.

Statute Law Revision Bill [H.L.] [22nd April.

To revise the Statute Law by repealing enactments which have ceased to be in force or have become unnecessary and re-enacting a provision of certain Acts which are otherwise spent.

Variation of Trusts Bill [H.C.] [22nd April.

Read Second Time:—

Agricultural Marketing Bill [H.C.] [22nd April.
Christmas Island Bill [H.L.] [24th April.
Royal Society for the Prevention of Cruelty to Animals Bill [H.C.] [23rd April.

Read Third Time:—

Blackpool Corporation Bill [H.L.] [22nd April.
London County Council (General Powers) Bill [H.L.] [24th April.
Mersey Docks and Harbour Board Bill [H.C.] [22nd April.
National Health Service Contributions Bill [H.C.] [22nd April.
Road Transport Lighting (Amendment) Bill [H.C.] [24th April.

In Committee:—

Tribunals and Inquiries Bill [H.L.] [22nd April.

B. QUESTION

LEGAL AID SCHEME

The LORD CHANCELLOR, asked to consider a legally aided case in which Mr. Justice Roxburgh had said that there had been systematic fabrication of evidence by the plaintiff, said he had done so and found that The Law Society's committee had acted entirely properly and correctly throughout. Both the defendants and counsel and solicitor acting for the plaintiff had known that the question of false evidence and faked exhibits would be strongly raised, but the defendants had not exercised their right to approach The Law Society for discharge of the legal aid certificate; indeed, they had made an offer to settle the claim. The plaintiff's advisers had rightly considered it their duty to continue to represent him.

In a population of 50 million it was inevitable that there should be some liars and that some of them should obtain legal aid. [22nd April.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Distribution of Industry (Industrial Finance) Bill [H.C.] [23rd April.

To enable the Treasury to give assistance under s. 4 of the Distribution of Industry Act, 1945, for reducing unemployment in localities suffering from a high rate of unemployment.

Finance Bill [H.C.] [23rd April.

To grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with Finance.

Read Second Time:—

Corporation of the Sons of the Clergy Charities Bill [H.C.] [25th April.
Landlord and Tenant (Temporary Provisions) Bill [H.C.] [24th April.
Reading Almshouses and Municipal Charities Bill [H.C.] [25th April.
Royal Institution of Great Britain Charity Bill [H.C.] [25th April.
St. James's Dwellings Charity Bill [H.C.] [25th April.

Read Third Time:—

Gloucester Corporation Bill [H.C.] [24th April.
Industrial Assurance and Friendly Societies Act, 1948 (Amendment) Bill [H.C.] [25th April.

B. QUESTIONS

APPEALS TO NATIONAL INSURANCE COMMISSIONER

Mr. BOYD-CARPENTER said that draft regulations providing for an unrestricted right of appeal from decisions of local tribunals to the National Insurance Commissioner were now being considered by the National Insurance Advisory Committee. Legislation to give a similar right under the Industrial Injuries Act was not likely in this Session. [21st April.

COUNTY COURTS (LANDLORD AND TENANT BILL)

The SOLICITOR-GENERAL said that the Lord Chancellor considered his existing powers sufficient to enable him to make arrangements for the county courts to deal with any additional work resulting from the Landlord and Tenant (Temporary Provisions) Bill. [22nd April.

RIVERS (PREVENTION OF POLLUTION)

Mr. H. BROOKE said that the Rivers (Prevention of Pollution) Act, 1951, s. 8 (2), prohibited the institution of proceedings by river boards in respect of certain offences under the Act without the consent of the Minister of Housing and Local Government. The subsection was due to expire on 31st July next unless extended, and a motion for an Address to extend the period for a further three years had been placed on the Order paper. [23rd April.

HOUSE PURCHASE (STAMP DUTY)

Mr. SIMON said that there would be grave and perhaps insurmountable difficulties in making the new stamp duties on house purchase applicable immediately instead of on 1st August next, since the Provisional Collection of Taxes Act, 1913, did not apply to stamp duty. [24th April.

STATUTORY INSTRUMENTS

British Nationality Regulations, 1958. (S.I. 1958 No. 655.) 7d.

Carlisle Water Order, 1958. (S.I. 1958 No. 615.) 5d.

Draft **Carmarthenshire and Cardiganshire** Police (Amalgamation)Scheme, 1958. 6d.

Draft **Cinematograph Films** (Collection of Levy) (Amendment) Regulations, 1958. 4d.

Coal Distribution (Restriction) Direction, 1958. (S.I. 1958 No. 688.) 5d.

Criminal Appeal Rules, 1958. (S.I. 1958 No. 652 (L.6).) 5d.

These rules, which came into operation on 1st May, relax the provisions of r. 5 (*d*) of the Criminal Appeal Rules, 1908, so as to enable the shorthand writer, with the leave of a judge of the Court of Criminal Appeal, to furnish a transcript of the shorthand note of a criminal trial or other proceeding in relation to which a person may appeal under the Criminal Appeal Act, 1907, to a person not entitled to one as of right.

Exchange of Securities Rules, 1958. (S.I. 1958 No. 662.) 5d.

Export of Goods (Control) (Consolidation) Order, 1958. (S.I. 1958 No. 617.) 1s. 8d.

Fire Services (Pensionable Employment) Regulations, 1958. (S.I. 1958 No. 640.) 5d.

Grass and Clover Seeds General Licence (Scotland), 1958. (S.I. 1958 No. 648 (S.29).) 5d.

Import Duties (Drawback) (No. 8) Order, 1958. (S.I. 1958 No. 653.) 5d.

Load Line (Amendment) Rules, 1958. (S.I. 1958 No. 620.) 5d.

London Traffic (Miscellaneous Prohibitions and Restrictions) Regulations, 1958. (S.I. 1958 No. 659.) 1s.

London (Waiting and Loading) (Restriction) Regulations, 1958. (S.I. 1958 No. 660.) 2s. 4d.

National Service (Miscellaneous) (Amendment) Regulations, 1958. (S.I. 1958 No. 661.) 5d.

Police Pensions (Scotland) (No. 2) Regulations, 1958. (S.I. 1958 No. 649 (S.30).) 6d.

Retention of Cable under a Highway (County of Buckingham) (No. 1) Order, 1958. (S.I. 1958 No. 631.) 5d.

Returning Officers' Expenses (England and Wales) Regulations, 1958. (S.I. 1958 No. 646.) 6d.

Rules of the Supreme Court (No. 1), 1958. (S.I. 1958 No. 650 (L.5).) 5d.

These rules came into operation on 1st May. They add London County 6 per cent. stock, 1975–1978, to the list of securities in which money in court may be invested; clarify certain provisions in Ord. 54, r. 23, and Ord. 55, r. 14D, as to appeals from a judge in chambers; amend Ord. 58, r. 3, as to time for appealing from a county court; and amend Appendix P (fixed costs recoverable under s. 47 (4) of the County Courts Act, 1934) in consequence of the changes in fees brought about by the Supreme Court Fees (Amendment) Order, 1958.

Safeguarding of Industries (Drawback) (No. 1) Order, 1958. (S.I. 1958 No. 654.) 5d.

Savings Certificates (Amendment) Regulations, 1958. (S.I. 1958 No. 670.) 4d.

Stopping up of Highways (County of Cambridge) (No. 2) Order, 1958. (S.I. 1958 No. 637.) 5d.

Stopping up of Highways (City and County Borough of Coventry) (No. 4) Order, 1958. (S.I. 1958 No. 643.) 5d.

Stopping up of Highways (County of Essex) (No. 7) Order, 1958. (S.I. 1958 No. 638.) 5d.

Stopping up of Highways (County of Kent) (No. 6) Order, 1958. (S.I. 1958 No. 628.) 5d.

Stopping up of Highways (County of Lancaster) (No. 11) Order, 1958. (S.I. 1958 No. 644.) 5d.

Stopping up of Highways (London) (No. 15) Order, 1958. (S.I. 1958 No. 645.) 5d.

Stopping up of Highways (County of Merioneth) (No. 1) Order, 1958. (S.I. 1958 No. 626.) 5d.

Stopping up of Highways (City and County Borough of Norwich) (No. 1) Order, 1958. (S.I. 1958 No. 625.) 5d.

Stopping up of Highways (City and County Borough of Norwich) (No. 2) Order, 1958. (S.I. 1958 No. 630.) 5d.

Stopping up of Highways (County of Oxford) (No. 2) Order, 1958. (S.I. 1958 No. 629.) 5d.

Stopping up of Highways (County Borough of Southampton) (No. 3) Order, 1958. (S.I. 1958 No. 636.) 5d.

Stopping up of Highways (County of Southampton) (No. 10) Order, 1958. (S.I. 1958 No. 635.) 5d.

Stopping up of Highways (County of Stafford) (No. 4) Order, 1958. (S.I. 1958 No. 639.) 5d.

Timber Cargo Regulations, 1958. (S.I. 1958 No. 621.) 6d.

Victory Bonds (Bank Issue) (Amendment) Regulations, 1958. (S.I. 1958 No. 641.) 5d.

Wages Regulation (Corset) Order, 1958. (S.I. 1958 No. 642.) 7d.

Wages Regulation (Shirtmaking) Order, 1958. (S.I. 1958 No. 656.) 7d.

West-of-Southampton – Salisbury – Bath Trunk Road (Landford Diversion) Order, 1958. (S.I. 1958 No. 619.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, Prices stated are inclusive of postage.]

OBITUARY

CAPT. R. J. BEATTIE

Captain Robert John Beattie, until his retirement assistant solicitor to the Ministry of Agriculture and Fisheries, died at Haslemere, Surrey, on 17th April, aged 74. He was for twenty years chairman of Bray Parish Council and represented Bray Division on the Berkshire County Council.

MR. J. F. HATCHARD

Mr. John Frederick Hatchard, solicitor, of Yeovil, died on 13th April. He was admitted in 1931.

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